

**BEFORE THE MISSOURI REAL ESTATE COMMISSION**

|                                 |   |                |
|---------------------------------|---|----------------|
| MISSOURI REAL ESTATE COMMISSION | ) |                |
|                                 | ) |                |
| Petitioner,                     | ) |                |
|                                 | ) |                |
| v.                              | ) | No. 16-3871 RE |
|                                 | ) |                |
|                                 | ) |                |
| BILLY D. BRAY                   | ) |                |
|                                 | ) |                |
| Respondent.                     | ) |                |

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DISCIPLINARY ORDER**

On or about October 4, 2017, the Administrative Hearing Commission entered its Decision in the case of *Missouri Real Estate Commission v. Billy D. Bray*, No. 16-3871 RE. In that Decision, the Administrative Hearing Commission found that Respondent Billy D. Bray's real estate salesperson license (license no. 2002011189) is subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.100.2(16), and (18) , RSMo.<sup>1</sup>

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on February 7, 2018, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. All of the members of the Commission were present throughout

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

the meeting. Rosemary Vitale and Charles Davis participated via conference call. Further, each member of this Commission has read the Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Ashley Ray. Respondent having received proper notice and opportunity to appear did appear in person with legal counsel, David F. Barrett. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Commission hereby states:

**I.**

**FINDINGS OF FACT**

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the Decision, and the record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Billy D. Bray*, Case No. 14-1893 RE, issued October 4, 2017, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent appeared in person with legal counsel, David F. Barrett at the hearing before the Commission.

4. This Commission licensed Respondent Billy D. Bray as a real estate salesperson, license number 2002011189. Respondent's salesperson license was current at all times relevant to this proceeding.

## II.

### CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the Decision issued by the Administrative Hearing Commission dated October 4, 2017, in *Missouri Real Estate Commission v. Billy D. Bray*, Case No. 16-3871 RE, takes official notice thereof, and hereby enters its Conclusions of Law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision dated October 4, 2017, Respondent's real estate salesperson license, number 2002011189, is subject to disciplinary action by the Commission pursuant to § 339.100.2(16), and (18), RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

## III.

### ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate salesperson license of Billy D. Bray (license no. 20020011189) is hereby placed on FIVE (5) YEARS PROBATION. During Respondent's probation, Respondent shall be entitled to practice under his respective license provided that Respondent adheres to all of the terms stated herein. The period of probation shall constitute the "disciplinary period."

The terms and conditions of the disciplinary period are as follows:

A. Respondent shall obey and comply with the terms and conditions of probation for

Bray's criminal supervision. Bray shall prepare and submit annual written reports to the MREC regarding the status of and compliance with Bray's criminal probation requirement of restitution payments. Bray is responsible for ensuring that such annual reports are received by the MREC on or before December 31st during each year of the disciplinary period. Bray shall submit the first such report so that MREC receives it on or before December 31, 2018.

B. At all times during the disciplinary period Bray must remain affiliated with O'Connor Real Estate, Real Estate Partnership (#1999148075).

C. Respondent shall keep the MREC apprised at all times, in writing, of Respondent's current addresses and telephone numbers at each place of residence and business. Respondent shall notify the MREC within ten (10) days of any change in this information.

D. Respondent shall timely renew his real estate license, timely pay all fees required for license renewal and shall comply with all of his requirements necessary to maintain his license.

E. Respondent shall meet in person with the Commission or its representative any such time or place as required by the Commission or its designee upon notification from the Commission or its designee. Said meetings will be at the Commission's discretion and may occur periodically during the probation period.

F. Respondent shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested by the Commission or its designee.

G. During the probationary period, Respondent shall accept and comply with unannounced visits from the Commission's representative to monitor compliance with the terms and conditions of this Order.

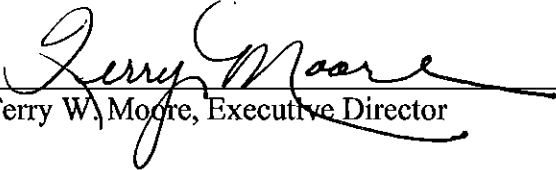
H. Respondent shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations duly promulgated under all local, state and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Respondent's license as a salesperson under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall constitute a violation of this Order.

I. Upon the expiration and successful completion of the disciplinary period, Respondent's respective real estate salesperson license shall be fully restored if all of his requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondent has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent's real estate salesperson license.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2018.

MISSOURI REAL ESTATE COMMISSION

  
Terry W. Moore, Executive Director

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI REAL ESTATE COMMISSION, )

Petitioner, )

v. )

Case No. 16-3871

BILLY D. BRAY, )

Respondent. )

**DECISION**

The Missouri Real Estate Commission (MREC) has cause to discipline Billy D. Bray's real estate salesperson license because he committed bank fraud.

**Procedure**

On December 9, 2016, MREC filed a complaint seeking to discipline Bray's real estate salesperson license. On January 12, 2017, Bray filed an answer. On June 9, 2017, we held a hearing. Assistant Attorney General Ashley D. Ray represented MREC, and David Barrett represented Bray. On July 10, 2017, Bray filed a post-hearing brief. On August 4, 2017, MREC filed findings of fact, conclusions of law and argument. The matter became ready for our decision on August 19, 2017, when the last written brief was due.

### Findings of Fact

1. At all relevant times, Bray held a current and active Missouri license as a real estate salesperson.
2. Nodaway Valley Bank (NVB) is a financial institution that serves northwest Missouri.
3. On January 6, 2014, Bray signed a personal financial statement with NVB stating that he owned 500 head of cattle worth \$427,000.
4. In February 2014, Bray renewed two loans with NVB, and represented to the bank his collateral as being cattle.
5. In September 2014, Bray took out another loan with NVB, and again stated his collateral was cattle.
6. On January 6, 2015, Bray signed a personal financial statement with NVB stating that he owned 550 head of cattle worth \$472,000.
7. On January 6, 2014 and January 6, 2015, Bray owned far fewer than 500 head of cattle.
8. In July 2014 and February 3, 2015, an NVB officer visited Bray's property to count the cattle that Bray claimed he owned. On both occasions, Bray showed the officer cattle that belonged to another person, and told the officer that he owned the cattle.
9. On October 20, 2015, Bray pled guilty in the United States District Court for the Western District of Missouri, Western Division, to one count of bank fraud pursuant to 18 U.S.C. § 1344. The count reads as follows:

On or about January 6, 2015, in the Western District of Missouri, and with the intent to defraud, Bill Bray knowingly executed a scheme to defraud a financial institution, [NVB], by means of false representations, that is, by stating he owned 550 head of cattle, and as a result of the execution of said scheme, attempted to obtain money or other property under the custody or control of [NVB].

10. On March 9, 2016, the court sentenced Bray to time served followed by supervised release for five years. The court also ordered Bray to pay \$141,760.24 in restitution and a \$100 assessment fee.

### **Conclusions of Law**

We have jurisdiction to hear MREC's complaint. Sections 339.100.2 and 621.045.<sup>1</sup> MREC has the burden of proving that Bray committed an act for which the law allows discipline. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

### **Evidentiary Objections**

MREC established Bray's criminal conviction through a certified copy of court records, which were admitted subject to a hearsay objection that we took with the case. We overrule the objection. The court records constitute "public records" and they are "competent evidence to establish the facts they are required to recite" and are "admissible without further statutory aid and are not excludible hearsay." *Knapp v. Missouri Local Gov't Emp. Retirement Sys.*, 738 S.W.2d 903, 912 (Mo. App., W.D. 1987). See also *State ex rel. Sure-Way Transp. Inc. v. Div. of Transp.*, 836 S.W.2d 23 (Mo. App. W.D. 1992).

### **Cause for Discipline**

MREC pled in its complaint that it has cause to discipline Bray's license pursuant to § 339.100.2 (16), (18) and (19), due to his guilty plea. Section 339.100.2 provides in relevant part:

The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

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<sup>1</sup> Statutory references, unless otherwise noted, are to the Revised Statutes of Missouri 2016. References to § 339.100 are to RSMo Supp. 2013.



(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

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(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

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(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

*Section 339.100.2(16)*

MREC contends that Bray's criminal conduct would have otherwise been grounds for it to refuse to issue him a license pursuant to § 339.040.1, which provides:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the [MREC] that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing;  
and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

MREC pled that Bray's criminal conduct gives rise to discipline pursuant to this subsection, and MREC argues in its brief that such discipline is appropriate because Bray lacks good moral character. MREC did not plead or argue that Bray lacks a good reputation for

honesty, integrity or fair dealing pursuant to § 339.040.1(2), or that he lacks competency pursuant to § 339.040.1(3). Accordingly, we evaluate MREC's argument that it has cause to discipline Bray's license because he lacks good moral character.

The phrase "good moral character" has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *Hernandez v. State Bd. of Regis'n for the Healing Arts*, 936 S.W.2d 894, 899, n. 1 (Mo. App. W.D. 1997)(citations omitted). Bray knowingly executed a criminal scheme to defraud NVB by falsely representing that his collateral was 500-550 head of cattle. Bray does not possess good moral character because his actions demonstrate that he is not a person of honesty, fairness or that he has a respect for the law and the rights of others.

Bray argues that subsection (16) does not apply to him because it refers to other grounds or conduct for which cause for discipline can exist independent of the other grounds listed in § 339.100.2.<sup>2</sup> While we agree with Bray's similar argument regarding § 339.100.2(19), which we address below, we do not agree with it regarding this subsection. The use of the word "otherwise" in subsection (16) references acts that would otherwise deny a licensee an original license. It does not limit the application of the subsection to acts not otherwise listed in the remaining subsections, and Bray's cited cases do not support such an argument.

There is cause to discipline Bray pursuant to § 339.100.2(16) because his conduct would serve as grounds to refuse to issue him a license as set forth in § 339.040.1(1) because he lacks good moral character.

#### *Section 339.040.2 (18)*

Pursuant to § 339.100.2(18), there is cause to discipline a licensee who has: a) entered a guilty plea "for any offense reasonably related to the qualifications, functions or duties" of a

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<sup>2</sup> Bray cites to *Missouri Real Estate Commission v. Vision Realty and Investment Group, Inc.*, No. 09-0426 RE (AHC December 10, 2009) and *Missouri Real Estate Commission v. Bastunas*, No. 09-1045 (AHC June 1, 2010).

licensee; b) "for any offense an essential element of which is fraud, dishonesty or an act of violence"; or c) "for any offense involving moral turpitude, whether or not sentence is imposed."

Bray concedes in his brief that he is subject to discipline pursuant to this subsection. Section 339.100.2(18) is clear that the commission of a crime of which an essential element is fraud is automatic grounds for discipline. When a licensee commits such a crime, there does not need to be a finding that the crime relates to the qualifications, functions or duties of a real estate salesperson or that it is a crime involving moral turpitude, although both of these are present in this case.

Bank fraud is such a crime pursuant to 18 U.S.C. § 1344, which states:

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

- (1) to defraud a financial institution; or
- (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises ... [.]

An essential element is one that must be proven for a conviction in every case. *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

Fraud is defined "generally under the common law as an intentional perversion of truth to induce another, or to act in reliance upon it." *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W. 2d 894, 899, n.2 (Mo. App. W.D. 1997). It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive. WEBSTER'S THIRD INTERNATIONAL DICTIONARY 650 (unabr. 1986). Bray pled guilty to bank fraud, as defined in 18 U.S.C. § 1344. Fraud and dishonesty are essential elements of the criminal offense of bank fraud as cited above. There is cause for discipline under § 339.100.2(18).

*Section 339.040.2(19)*

The MREC argues that Bray is subject to discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence [.]” The adjective “other” means “not the same: DIFFERENT; any [other] man would have done better[.]” WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

Accordingly, this subdivision refers to conduct different from that referred to in the remaining subdivisions of § 339.100.2. We have found above that Bray is subject to discipline under § 339.100.2(16) for a crime of which an essential element is fraud. MREC pled no other conduct except Bray's crime of bank fraud. Therefore, we find no cause for discipline under § 339.100.2(19).

**Summary**

Bray is subject to discipline pursuant to § 339.100.2(16) and (18).

SO ORDERED on October 4, 2017.



RENEE T. SLUSHER  
Commissioner

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

MISSOURI REAL ESTATE  
COMMISSION  
3605 Missouri Blvd.  
P.O. Box 1339  
Jefferson City, MO 65102-1339,

Petitioner,

v.

BILLY D. BRAY  
2903 Eastbrook Court  
Saint Joseph, Missouri 64506

Respondent.

**FILED**

DEC 09 2016

ADMINISTRATIVE HEARING  
COMMISSION

Case No. \_\_\_\_\_

COMPLAINT

Petitioner, the Missouri Real Estate Commission (MREC), by and through the Missouri Attorney General's office, states for its cause of action as follows:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo,<sup>1</sup> for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo 2000 (as amended), relating to real estate salespersons and brokers.

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<sup>1</sup>All statutory citations are to Missouri Revised Statutes 2000, as amended, unless otherwise noted.

2. Respondent, Billy D. Bray ("Bray"), is licensed by the MREC as a real estate salesperson, license no. 2002011189. Bray's license is, and was at all relevant times herein, current and active.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.100.2, RSMo.

4. On or about October 20, 2015, Bray pled guilty to one count of bank fraud, a class B felony in the United States District Court for the Western District of Missouri, under 18 U.S.C. § 1344.

5. Bray's guilty plea was to Count One of the Information, which read as follows:

On or about January 6, 2015, in the Western District of Missouri, and with the intent to defraud, Bill Bray knowingly executed a scheme to defraud a financial institution, Nodaway Valley Bank, by means of false representation, that is, by stating he owned 550 head of cattle, and as a result of the execution of said scheme, attempted to obtain money or other property under the custody or control of Nodaway Valley Bank.

All in violation of Title 18, United States Code, Section 1344.

6. Title 18 United States Code Section 1344, which defines the crime of bank fraud, states:

Whoever knowingly executes, or attempts to execute, a scheme or artifice –

(1) To defraud a financial institution; or

(2) To obtain any moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

7. Section 339.100.2, RSMo (Supp. 2016), establishing jurisdiction and setting forth the grounds for discipline, provides in part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

.....

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

.....

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

8. Section 339.040.1, RSMo (Supp. 2016), setting forth the grounds for issuance of a real estate license, states:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

9. Based on facts alleged above, Bray engaged in conduct that would be grounds for the MREC to refuse to issue a license under section 339.040 and providing cause to discipline his license pursuant to § 339.100.2(16), RSMo.

10. Bray's guilty plea to the crime of bank fraud, provides cause to discipline Bray's license pursuant to § 339.100.2(18), RSMo (Supp. 2016), in that Bray pled guilty in a criminal prosecution under the laws of the United



States 1) to an offense that is reasonably related to the qualifications, functions and/or duties of a real estate salesperson, 2) to an offense of which an essential element is fraud and/or dishonesty, and/or 3) to an offense which involves moral turpitude.

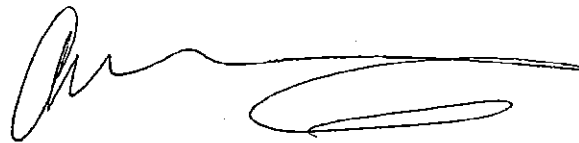
11. Bray's conduct, as alleged in this Complaint, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith, incompetence, misconduct, and/or gross negligence, providing cause to discipline Bray's license under § 339.100.2(19), RSMo.

12. Cause exists to discipline Bray's license as a real estate salesperson pursuant to § 339.100.2(16), (18), and/or (19), RSMo.

WHEREFORE, Petitioner requests that the Administrative Hearing Commission conduct a hearing in this case pursuant to Chapter 621, RSMo, and issue its Findings of Fact and Conclusions of Law determining that Petitioner may take disciplinary action against the license of Respondent, Billy D. Bray, as a real estate salesperson for the violations noted above, and for such other relief as the Commission deems appropriate.

Respectfully submitted,

CHRIS KOSTER  
Attorney General



Ashley D. Ray  
Assistant Attorney General  
Missouri Bar No.67894

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